COMMERCIAL CONTRACTING

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COMMERCIAL CONTRACTING

- The Federal Acquisition Streamlining Act (FASA) of 1994 established acquisition policies "more closely resembling commercial practices"

- Implemented by FAC 40-32 as FAR Part 12

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Agencies are required to:

- Conduct market research to identify availability, commercial or nondevelopmental products that meet agency's requirements
- Acquire commercial or nondevelopmental items when available
- Require prime and subcontractors to incorporate commercial items to the maximum extent practicable

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- Commercial contracts shall, to the maximum extent possible, utilize SF1449
- An SF1449 can be:
  - Solicitation
  - Ordering Document
  - Contract
  - Acceptance Document
  - Shipping Document
  - Invoice

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PAYMENTS

Delivery: Payment for delivered goods and services can be DD250, SF1449, Commercial Invoices

COMMERCIAL ITEM FINANCING

- Advance Payment
  - Paid prior to the accomplishment of any work
  - NTE 15% of price
- Interim Payment
  - Periodic payments over course of contract
  - NTE 70% of price

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Eight criteria for authorizing financing (FAR 32.202-1)

1. Item financed is a commercial supply or service.
2. Contract price exceeds simplified acquisition threshold.
3. **CO determines that it is appropriate or customary in the commercial marketplace to make financing payments for the item.**
4. Must be in the best interest of the Government.
5. **Adequate security is obtained.**
6. Aggregate of Commercial Advance Payment shall not exceed 15% of the Contract Price.
7. Contract is awarded under competitive procedures or, if only one offer solicited, consideration obtained for any advantage over normal customer financing.
8. Payment office concurs with liquidation provisions when required (32.206(e)).

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EXPERIENCE - Not Good

WHY

- Confusion on commercial vs. mandatory clauses
- Lack of infrastructure for commercial payments
- Failure to follow basic FAR requirements on contract structure

Reduced Effort for PCO/Contract or Can Mean Increased Effort For ACO/Payment Office

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Confusion on Commercial vs. Mandatory Clause

Example: PCO can tailor acceptance provisions in the contract but ***<u>cannot</u>*** alter Prompt Payment provisions.

Commercial practice may be acceptance by proof of shipment or payment without acceptance.

Prompt Payment requires payment only after written acceptance by a Government official.

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Lack of Infrastructure

Example: MOCAS system for making delivery payments was designed around DD250.

SF1449s do not contain blocks for information required by MOCAS (and other systems).

CAOs have to “create” documents so that payment can be made.

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Failure to Follow Basic FAR Requirements on Contract Structure

Example: Part 12 contract with prices based on annual catalogue.

FAR requires One Price per CLIN.

PCO increased quantity on contract with new catalogue.

One CLIN - Two Prices

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- SF1449 incorporates all blocks required for payment and add instructions clarifying use of the form.

- Policy letter 97-49 was issued on May 9, 1977 providing guidance on payments under commercial contracts.